

Memo

To: Board of Managers
From: Michael Younes, Director of Municipal Operations *[Signature]*
CC: Shana Davis-Cook, Village Manager
Date: 9/4/2013
Re: Connecticut Avenue Tree Planting Memorandum of Understanding

Background

As the Board is aware, the Connecticut Avenue corridor has suffered the loss of much of its tree canopy due to numerous storms, utility pruning and natural causes due to age and other factors. At the urging of the, Tree Committee and residents, the Board tasked staff to work with the Maryland State Highway Administration (SHA) to develop a plan to reforest the corridor.

Current SHA regulations do not allow planting of trees closer than six (6) feet to an active travel lane, even though there are currently large mature trees within these extents. In order to allow planting closer than six (6) feet, SHA requires that a Memorandum of Understanding (MOU) be executed to address how planting, maintenance and liability issues are dealt with. Over the summer, with assistance from Village Counsel, I have been working with SHA to finalize language that would be agreeable to the Village while maximizing the number and species of trees we would be able to plant. Below is a list of the pertinent provisions within the MOU for Board consideration:

1. Up to 105 trees will be permitted within the Connecticut Avenue (MD 185) public right-of-way between Chevy Chase Circle and Bradley Lane.
2. All trees require a minimum three (3) foot offset from the inside of the curb.
3. The Village or its' agent or contractor will be required to plant all trees.
4. The Village will be required to perform all maintenance, including, but not limited to, pruning, trimming and removal of any trees planted pursuant to the MOU.
5. Should SHA require corrective action (i.e., pruning or removal) on any trees planted by the Village, the Village agrees to perform the stipulated action within five (5) business days or SHA will complete the work and bill the Village for the expense.
6. The Village or its agent or contractor would be required to carry minimum liability insurances of \$1,000,000 in the event of an incident that occurs during or as a result of planting or maintenance.
7. The MOU and "District" Permit shall be effective for a period of five (5) years at which time the Village must apply to renew both documents for any new plantings and maintenance activities.

Chevy Chase Club

The Chevy Chase Club has also been following our efforts to reforest Connecticut Avenue and met with Ms. Baptiste, Mr. Denger, Tree Committee Chair Samuel Lawrence and me last year to discuss our plans. Throughout the summer, I have had numerous conversations with the Club's General Manager, Mr. Luke O'Boyle. Now that MOU language has been finalized through SHA; the Club has offered to assist the Village in carrying out our goal to reforest the Avenue. Exact details still need to be worked out, but would involve one of the following:

1. The Club would reimburse the Village for up to 20 trees (the number currently slated to be planted in front of the Club) at a rate of \$350 (includes tree and labor costs); or
2. The Club would plant up to 20 trees (the number currently slated to be planted in front of the Club) at their expense.

In either option, the Club would take the responsibility of watering the new trees, while all other pruning, trimming and removal responsibilities would still fall to the Village per the MOU.

Staff Recommendation

Staff recommends that the Village approve and authorize the Village Manager to execute the attached MOU between the Village and SHA to reforest the Connecticut Avenue corridor between Chevy Chase Circle and Bradley Lane. Staff will continue to work with representatives from Chevy Chase Club regarding the planting of trees along Connecticut Avenue adjacent to their property.

Board Action

If the Board concurs with staff's recommendation, staff requests authorization for the Village Manager to execute the attached MOU between the Village and SHA to allow for the planting and maintenance of up to 105 trees along Connecticut Avenue (MD 185) from Chevy Chase Circle to Bradley Lane.

Draft Motion: *I move to **APPROVE/DENY** staff's recommendation to authorize the Village Manager to execute the attached MOU between the Village and SHA.*

Attachment

- 1) Draft Memorandum of Understanding with SHA

MEMORANDUM OF UNDERSTANDING

MD 185 Tree Plantings Chevy Chase Circle to Bradley Lane

**By and between
Chevy Chase Village
and
Maryland State Highway Administration**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”), executed in duplicate, made effective this _____ day of _____, 2013 by and between the State Highway Administration of the Maryland Department of Transportation, acting for and on behalf of the State of Maryland, hereinafter called “**SHA**” and Chevy Chase Village, a municipal subdivision located in Montgomery County, Maryland, hereinafter called “**VILLAGE**”.

WHEREAS, SHA owns and maintains MD 185 (Connecticut Avenue) including the portion that is located within the jurisdiction of the VILLAGE; and

WHEREAS, MD 185 functions as local roadway within the VILLAGE; and

WHEREAS, the VILLAGE has expressed to SHA its interest to plant trees, and to provide trimming, pruning, mulching, and related maintenance duties; and

WHEREAS, the VILLAGE has requested, and SHA has agreed, to allow the VILLAGE to perform certain tree planting activities along MD 185 from Chevy Chase Circle to Bradley Lane and to plant up to 105 trees hereinafter referred to as the “**PLANTING**” and to perform any subsequent tree related maintenance operations on the newly planted trees within the aforementioned limits of MD 185; and

WHEREAS, the VILLAGE agrees all trees associated with the PLANTING shall be in accordance with SHA’s approved tree species list; and

WHEREAS, after the PLANTING the VILLAGE shall also be responsible for all maintenance and care of the PLANTINGS, hereinafter called “**MAINTENANCE**”; and

WHEREAS, the PLANTING and the MAINTENANCE are collectively referred to herein as the “**PROJECT**”; and

WHEREAS, SHA has determined that the VILLAGE has or is able to contract for the necessary equipment and staff to perform the PROJECT in a manner consistent with SHA standards; and

WHEREAS, SHA has agreed to allow the VILLAGE to perform the PROJECT at no cost to SHA; and

WHEREAS, SHA and the VILLAGE agree that this MOU will benefit both parties to this MOU and will promote the safety, health and general welfare of the residents of the State of Maryland and the VILLAGE.

NOW, THEREFORE, THIS MEMORANDUM OF UNDERSTANDING WITNESSETH, that for and in consideration of the foregoing, and the mutual promises and other good and valuable consideration set out herein, the receipt and sufficiency of which are hereby acknowledged, SHA and the VILLAGE do hereby agree as follows:

I. PROJECT DESCRIPTION

- A. The PROJECT to be performed by the VILLAGE shall generally consist of the PLANTING and MAINTENANCE:
 - 1. The PLANTING shall consist of the planting of up to 105 trees in the SHA right of way along MD185 (Connecticut Avenue) from Chevy Chase Circle to Bradley Lane in the approved locations referenced in **EXHIBIT A**, which is attached hereto and incorporated by reference. Tree selection shall be in accordance with SHA's approved tree species list. The VILLAGE is required to perform any and all subsequent MAINTENANCE activities associated with the trees.
 - 2. The MAINTENANCE shall generally consist of all activities necessary to properly maintain and care for the PLANTING, to include but not be limited to, pruning, trimming, mulching, and removal. The VILLAGE may, if it so chooses, replace any tree that has been removed. Any replacement trees shall also be in accordance with SHA's approved tree species list and subject to SHA approval.

II. SHA RESPONSIBILITIES

- A. SHA shall provide the VILLAGE with a District Permit ("**PERMIT**"), with a term of five (5) years to be renewed every five years and the PERMIT shall grant a right-of-entry to VILLAGE personnel or its agents or contractors for the sole purpose of performing the PLANTING and MAINTENANCE described herein provided said party has met all requirements for such activities as set forth herein (e.g. insurance, other permit requirements, etc.)
- B. In the event the VILLAGE fails to perform the PLANTING as described herein and corrective action is needed in SHA's reasonable opinion, SHA shall notify the VILLAGE as to the corrective action required. The VILLAGE shall commence the corrective action within five (5) business days from receipt of notification from SHA. If the VILLAGE does not commence corrective action within five (5) business days, as may be directed by SHA, SHA reserves the right to perform such necessary corrective action as may be needed and bill the VILLAGE with an invoice for the cost for such corrective action.

III. VILLAGE RESPONSIBILITIES

- A. The VILLAGE shall obtain from SHA's District 3 Office, the PERMIT as referenced in section II.A. prior to entering upon SHA right-of-way for the purpose of accomplishing the PLANTING and the MAINTENANCE as described herein, and submit to SHA's - District 3 Office proposed tree plantings to include location and species for each PLANTING.
- B. The VILLAGE shall be responsible to perform the PLANTINGS in a manner acceptable to SHA and as conditions warrant.
- C. The VILLAGE understands that when performing the PLANTING and MAINTENANCE, Maintenance of Traffic lane closures may be required. In that event, the VILLAGE shall obtain a lane closure permit from SHA's District 3 Office.
- D. The VILLAGE shall be responsible for all PLANTINGS installed under this MOU and the PERMIT. SHA will not be required to replace or repair any PLANTINGS if damaged by SHA maintenance activities along MD 185 Connecticut Avenue.
- E. During the term of this MOU and the PERMIT, the VILLAGE shall provide written documentation that it, or any agent or contractor procured by the VILLAGE to perform the work of the PROJECT (i) carries a valid insurance policy with, as a minimum, the following limits: \$1,000,000 for general liability and \$1,000,000 for automobile liability; (ii) has added SHA, the Maryland Department of Transportation and the State of Maryland as additional named insureds; and (iii) has a policy that may only be cancelled by the insurance company after thirty (30) days prior written notice to SHA. The VILLAGE and/or its contractors shall also provide SHA with a current and valid workers compensation insurance policy with limits equal to or in excess of those required by law.
- F. The VILLAGE agrees that it shall, with regard to the PROJECT, comply with all applicable laws, rules and regulations, including safety requirements imposed by SHA. The VILLAGE's contractor must have a minimum of three (3) years experience in the performance of all activities included in the PROJECT. The VILLAGE shall also obtain all permits necessary to perform the MAINTENANCE from SHA and as needed from any other entity.
- G. The VILLAGE shall take action to correct any issues concerning the MAINTENANCE as directed by notification from SHA or the VILLAGE's awareness of the need for maintenance..
- H. If the VILLAGE fails to take corrective action within five (5) business days of notification and SHA must perform any corrective action as to the MAINTENANCE, the VILLAGE shall reimburse SHA within thirty (30) days of receipt of any invoice for all documented costs incurred by SHA for such corrective action, including SHA's direct salaries, payroll burden and overhead. If

payment of the overdue amount is not received within thirty (30) days of invoice receipt,, SHA will then notify the VILLAGE in writing that SHA may make a deduction from the VILLAGE'S share of Highway User Revenue equal to the overdue invoice amount(s).

- I. The VILLAGE understands and agrees that it, its agents, contractors and employees assume the risk of performing the PROJECT and hereby releases SHA and the State of Maryland from any claims, losses or costs for damages or injuries the VILLAGE may incur or sustain in the course of performing the MAINTENANCE, with the exception of claims, losses or cost for damages attributable solely to the acts or omissions of SHA or the State of Maryland.
- J. The initial term of this MOU shall be five (5) years from the date of final execution. The MOU may be amended and shall be renewable by mutual written agreement of the parties. However, SHA may terminate this MOU in the event the VILLAGE fails to properly perform the PROJECT as required herein or in accordance with the specified standards of SHA. Either SHA or the VILLAGE may terminate this MOU at any time, upon written notification to the other party. If the MOU is terminated by either party the VILLAGE will be responsible for removing all items associated with the PLANTINGS and complete restoration to original condition of the associated right of way along MD 185, if required to do so by SHA.
- K. The VILLAGE is responsible for coordinating the PLANTING and MAINTENANCE with Miss Utility to ensure no damage occurs to utilities (both overhead and underground) during the performance and term of the PROJECT and shall plant trees in accordance with the "Right Tree, Right Place" guidelines provided by the Maryland Electric Reliability Tree Trimming Council
- L. The VILLAGE shall ensure proper sight distance for Traffic Control Devices is maintained.

IV. GENERAL

- A. SHA shall not be liable for any obligation, act, failure to act or omission of the VILLAGE, its employees, contractors or assigns.
- B. The parties hereto agree to cooperate with each other to accomplish the terms and conditions of this MOU.
- C. This MOU shall inure to and be binding upon the parties hereto, their agents, successors, and assigns.
- D. This MOU and the rights and liabilities of the parties hereto shall be determined in accordance with Maryland law and in Maryland courts.
- E. The recitals (WHEREAS clauses) at the beginning of this MOU are incorporated herein as part of this MOU.

All notices, if to the VILLAGE, shall be addressed to:

Name: Shana Davis-Cook
Title: Manager, Chevy Chase Village
Chevy Chase Village
5906 Connecticut Avenue
Chevy Chase, MD 20815
Phone: 301 654-7300
Fax: 301 907-9721

If to SHA:

Mr. Brian Young, District Engineer, D-3
State Highway Administration
9300 Kenilworth Avenue
Greenbelt, MD 20770
Phone: 301 513-7300
E-mail: byoung@sha.state.md.us

with a copy to:

Mr. E. Glenn Klaverweiden, Agreements Coordinator
Regional and Intermodal Planning Division
State Highway Administration
Mailstop C-502
707 N. Calvert Street
Baltimore MD 21202
Phone: 410-545-5675
Fax: 410-209-5025
E-mail: gklaverweiden@sha.state.md.us

IN WITNESS WHEREOF, the parties hereto have caused this MEMORANDUM OF UNDERSTANDING to be executed by their proper and duly authorized officers, on the day and year first above written.

WITNESS

STATE HIGHWAY ADMINISTRATION

By: _____ (SEAL)
Melinda B. Peters Date
Administrator

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

RECOMMENDED FOR APPROVAL:

Assistant Attorney General

Gregory D. Welker
Deputy Administrator/Chief Engineer
for Operations

Douglas H. Simmons
Deputy Administrator/Chief Engineer
for Planning, Engineering, Real Estate &
Environment

Lisa B. Conners
Director of Finance

WITNESS:

CHEVY CHASE VILLAGE

By: _____
Shana Davis-Cook Date
Manager,
Chevy Chase Village

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

Suellen M. Ferguson,
Chevy Chase Village Attorney

EXHIBIT A

The approved locations are:

New Trees requiring minimum 6' offset back from curb

(Approved per SHA District 3 Utility Permit No: SHA-3-MO-0221-13)

Bradley Lane to Quincy Street – Nine (9) trees, northbound side

Quincy Street to Primrose Street – Four (4) trees, northbound side in lawn strip

Oxford Street to Newlands Street – Twelve (12) trees, northbound side

Newlands Street to Melrose Street – Four (4) trees, northbound side in lawn strip

Melrose Street to Lenox Street – Three (3) trees, southbound side in boxwood bed,

One (1) tree northbound side in lawn strip

Kirke Street to Irving Street – Two (2) new trees northbound side in lawn area

Irving Street to Chevy Chase Circle – Three (3) trees southbound side (2 median, 1 lawn area)

Five (5) northbound side

New Trees requiring minimum 3' offset from back of curb

TBD

Future locations to be submitted for District 3 Utility Permit and approved by SHA Landscape Architecture Division.

All trees require minimum 3' offset from back of curb